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Table with 5 columns: APPLICATION NO., FILING DATE, FIRST NAMED INVENTOR, ATTORNEY DOCKET NO., CONFIRMATION NO. Includes application details for ECKERT SEAMANS CHERIN & MELLOTT, LLC and examination information for RHEA M SHIELDS.

Please find below and/or attached an Office communication concerning this application or proceeding.

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte LUIS F. SALAS, OSCAR L. NEUNDORFER,
and SAIVARAPRASAD MURAHARI

Appeal 2019-001578
Application 29/547,546
Technology Center 2900

Before JOHN C. KERINS, JILL D. HILL, and GEORGE R. HOSKINS,
Administrative Patent Judges.

KERINS, *Administrative Patent Judge.*

DECISION ON APPEAL

Pursuant to 35 U.S.C. § 134(a), Appellant¹ appeals from the Examiner's decision to reject the sole claim in this application. We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

¹ The term "Appellant" is used herein to refer to "applicant" as defined in 37 C.F.R. § 1.42. Appellant identifies the real party in interest as Eaton Corporation. Appeal Br. 1.

THE INVENTION

Appellant's claimed invention is to an ornamental design for an electrical outlet. Spec. 1. Figures 5 and 6 of Appellant's drawings, as filed on March 16, 2017, are reproduced below:

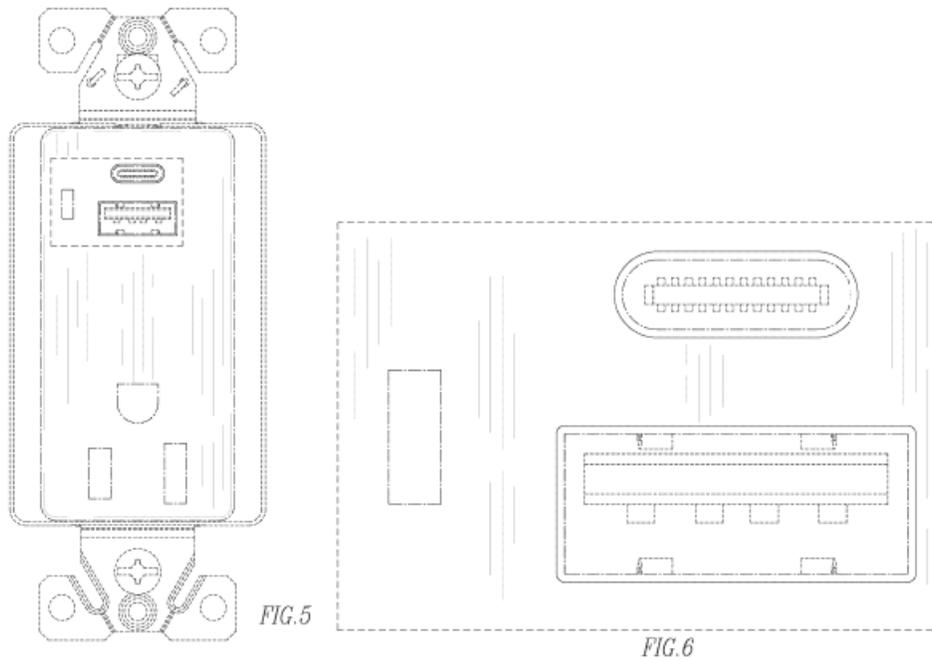


Figure 5 above is a front elevation view, and Figure 6 above is an enlargement of the indicated portion of Figure 5, of the claimed electrical outlet.

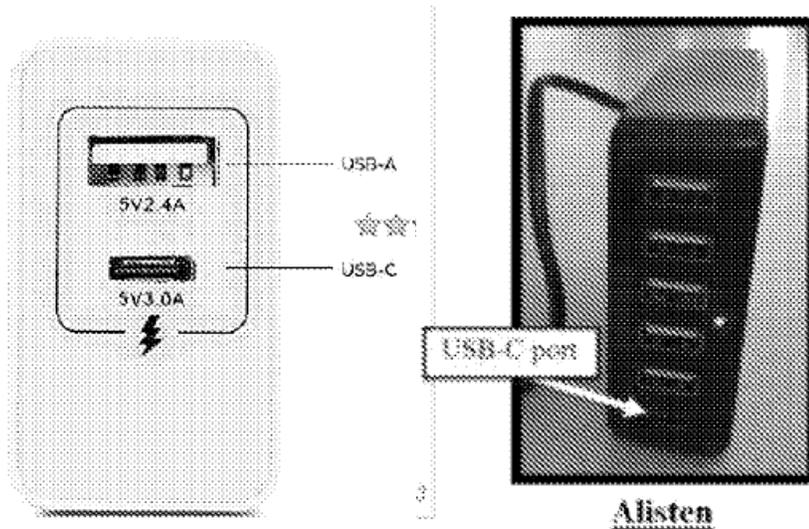
THE REJECTION²

The Examiner rejects the sole claim of the application under 35 U.S.C. § 103 as being unpatentable over GMYLE (“USB-C Charger, GMYLE 20W USB Dual Ports Type C & A Power Adapter AC Wall Charger,” appearing on amazon.com, paper copy of record dated 12/1/2016)

² A rejection of the claim under 35 U.S.C. § 102(a)(1) was withdrawn on appeal. Ans. 3.

in view of Alisten (“*Alisten 6 Port High Speed USB-C USB Wall Charger Hub Station*,” appearing on amazon.com, paper copy of record dated 12/6/2016). Final Act. 7.

GMYLE is reproduced on the left below, and Alisten on the right:



Illustrated above, on the left, is a front elevation view of the GMYLE device, and, on the right, is a front perspective view of the Alisten device.

ANALYSIS

The Examiner’s position is that GMYLE operates as a *Rosen*³ reference, i.e., a something in existence, the design characteristics of which are basically the same as the claimed design. Final Act. 7–8. Appellant disagrees, arguing that the claimed design is “manifestly and noticeably different in appearance” from the cited references. Appeal Br. 21–22.

³ *In re Rosen*, 673 F.2d 388 (CCPA 1982).

Appellant has the better position. Although the Examiner lists several design characteristics alleged to be common between GMYLE and the claimed appearance, the Examiner downplays to too great of an extent noticeable differences between the two that render the claimed design noticeably different in appearance. Final Act. 8–9.

The Examiner acknowledges that, in the claimed design, the smaller opening having semicircular ends is positioned above the larger rectangular shaped opening, whereas, in GMYLE, those positions are reversed. *Id.* at 8. The Examiner apparently is of the position that, save for modifying the smaller opening in GMYLE to have rounded corners as disclosed in Alisten, the appearance of the claimed design is not patentably distinct from the appearance of the GMYLE device. In our view, this different positioning or location indeed contributes significantly to the different overall appearance.

The Examiner cites to *In re Lapworth*⁴ as support for the position that what the Examiner regards as only subtle or *de minimis* differences between the claimed appearance and the GMYLE appearance are not sufficient to result in the claimed appearance being patentably distinct. Appellant points out that, in *Lapworth*, two boat hull designs were nearly indistinguishable from one another until they were superimposed on one another. Reply Br. 6. We agree with Appellant that, unlike the designs at issue in *Lapworth*, “the claimed design is immediately visually distinct from the cited art and there is no need to superimpose anything with anything else” in order to appreciate the different overall appearance of the claimed design from GMYLE. *Id.*

⁴ 451 F.2d 1094 (CCPA 1971).

In view of the foregoing, we conclude that GMYLE is not a *Rosen* reference because its design characteristics are not basically the same as the claimed design, so we do not sustain the rejection of the claim on appeal as being unpatentable over GMYLE and Alisten.

CONCLUSION

In Summary:

Claims Rejected	Basis	Affirmed	Reversed
1	§ 103		1
Overall Outcome			1

DECISION

The Examiner's rejection of the claim under 35 U.S.C. § 103 is reversed.

REVERSED